IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.230 OF 1995

Sou. Chhaya @ Jayshri Hanmant
Ingavale, Convict no.26095 .. Appellant
(Orig.accused)
V/s.
The State of Maharashtra .. Respondent.

Shri M.A. Patil, Advocate appointed for the appellant is absent.
Shri D.R. More, A.P.P. for the Respondent/State.

CORAM : S.S. PARKAR, &
ANOOP V.MOHTA, JJ.
DATE : 1ST APRIL, 2005.

ORAL JUDGMENT (PER ANOOP V. MONTHA, J.)

. The mother-appellant was charged, tried and convicted for the offence under Section 302 of Indian Penal code (for short IPC) for committing murder of her own twins by drowning them into the Well. The appellant has preferred this appeal against the Judgment and order of conviction for life, dated 02/07/1992, passed by the Additional Sessions Judge, Satara.

2. The appellant, Sou. Chhaya @ Jayshrri was married at the age of 15, with a man of 40 years of age, without her consent. After one months from the date of

marriage, her parents brought her back to the house at village Bhadale, Tal. Koregaon,District Satara. The appellant, thereafter, never returned back to her in laws' house. She has been living with her mother Shantabai (P.W.2), brother and two sisters. As per the prosecution, the appellant had illicit relations with one Madhukar Vasant Jadhav. She became preganant. She was living in the said condition in the same house. Some villagers knew about her illicit pregnancy. On 27/01/1991 at about 9 a.m. in the jwar field of Narayan Pandurang, she (Chhaya) delivered twin. The appellant herself cut the navel cord of the twins by a blade. Therefore, the blood stained blade and blood was found on the spot of delivery. She was unconscious for some time. After gaining consciousness, she threw the newly born twins in the nearby Well, which was 8 feet away from the place of delivery. On 31st January, 1991, on the report from the villager, Hanamant Raut, about the floating bodies of children in the Well, an accidental death report was registered. Both dead bodies were discovered after 4 days from the date of delivery. The dead bodies were taken out from the Well in presence of panchas and PW.2, Shantabai. An Inquest panhanama Exh.9, dated 31/1/1991 was drawn by P.W.6, Pandurang

Patil. The dead bodies were sent for post-mortem examination. During the enquiry, it was detected that the appellant on 27/1/1991 delivered twin girls in the field and later on had thrown them into the well. The Police Head Constable, Pharande (P.W. 5), therefore, filed the report on behalf of the State, against the accused, which was registered, as Crime No. 10/1991. Pandurang Yeshwant Patil was investigating officer, took the custody of the accused on 1/2/1991. The statement of P.W.2 and accused were recorded. Shantibai (P.W.2), the mother of the accused, in her statement, recorded on 1st February, 1991, stated that the appellant-accused had committed the crime. On 31/1/1991 itself, the appellant had confessed about the crime to P.W.5, Hanmant, a Police Head Constable. On 1/2/1991, the said confessional statement, was recorded by P.W. 5 Hanmant. Based on which the basic FIR (Exh.28) was lodged by Hanmant (P.W.5). The accused was arrested on 5th February, 1991. The panchanma of the delivery spot, as pointed out by the appellant, was drawn (Exn.22) on 6/2/1991. The blood spotted earth and the blood stained blade were seized in presence of P.W.1, a panch. The clothes of the accused were also seized. The statements of the witnesses were also recorded. After due

investigation charge-sheet was filed against the accused under Section 302 and 315 of IPC. The appellant pleaded not guilt. The appellant in her statement under Section 313 of Code of Criminal Procedure, in the defence, as per written statement Exh.33, expressed her ignorance about the murder of twins. The prosecution examined six witnesses. No defence witness was examined by the appellant. The learned Sessions Judge by the impugned judgment and order dated 2nd July, 1992 acquitted the appellant of the offence under section 315 but convicted for the offence under Section 302 of IPC and sentenced her to undergo rigorous imprisonment for life. Therefore, this appeal filed by the appellant through jail.

3. None appeared for the appellant. Heard learned A.P.P., Mr. D.R. More for the Respondent/State of Maharashtra. We have gone through the record including the grounds raised in the appeal. The appellant was in jail for more than four and half years before she was released by the High Court on bail on 22/8/1995. After reappriciation of the evidence, as well as, reasoning, given by the learned Judge, we are of the view, that the prosecution has failed to prove the guilt of the

appellant. The conviction, based upon the circumstantial evidence raises various doubts in the prosecution case. We are therefore, interfering with the impugned Judgment and order, and is liable to be set aside. The appellant is entitled for acquittal for the following reasons.

4. There was no eye witness to the incident. The learned Sessions Judge, relied mainly upon the evidence of Shantabai (PW.2), the mother of the accused/appellant. As per this witness, on a Sunday she had been to the floor mill, at about 9 a.m. and after returning at about 10 a.m., she found the petticoat of the appellant was stained with blood. The mother thereafter, washed her saree (article No.1) also. At that time, as per this witness, the appellant told her that she had thrown her newly born children in the Well situated in the field of Mr. Bavkar, to avoid defamation and also informed that she had illicit relations with Madhukar Jadhav. The accused also informed about her delivery in the field of Mr. Bavkar. On Friday, the police came and accused-Chhaya was taken in custody. The washed saree (article 1) was also seized by the police. In her cross-examination, the

mother (PW2) of the accused has stated about her own 4 daughters and one son. Their house was of one room only and they were residing together. There was rumour in the village about the illicit relations of the appellant with Madhukar Jadhav. This witness has admitted that she took the accused to Dr. Bhagwat, 2-3 months prior to the incident, but she denied the pregnancy of 5-6 months. She has even denied the pregnancy rumours of the accused. She has denied the suggestion that she did cut navel cord of the newly born twins and that after the delivery, blood was oozing due to which the appellant become unconscious. She has also denied the suggestion that she threw the children in the Well, as they were born out of illicit relations. She has also denied that the delivery took place at about 3 to 4 P.M. before sun set. She stated in cross-examination that the appellant told about the incident and illicit relations only when the police came to her house. She stated that, "I did not recognise whether my daughter Chhaya’s stomach was like a pregnant woman", "I did not ask anything to my daughter Chhaya, when I came back from the floor mill and found that the size of her stomach has been reduced". "At that time I also did not feel to take my daughter to the Doctor".

5. According to us, this witness is unreliable. It is difficult to accept the evidence of P.W.2, the mother of the accused, when she expressed her ignorance about the preganancy of the appellant. She was also showing ignorance about the illicit relations of the appellant with Madhukar Jadhav, when she herself in cross-examination admit about the rumours of illicit relations with Madhukar Jadhav in the locality. She admitted in her cross-examination that she took the accused to Dr. Bhagwat, 2-3 months prior to the incident, but she denied the suggestion that her daughter was having pregnancy of 5-6 months. It is difficult to accept the prosecution case and of the mother, P.W. 2, Shantabai, who was residing with the accused alongwith her daughters and son in one room and unable to notice the pregnancy of the accused. It is also not acceptable that the mother (PW.2) would not ask or enquired , why her stomach was flat or reduced, after returning from the floor mill on the said Sunday morning. It is difficult to believe that P.W.2 came to know about the incident when the accused made extra judicial confession to her about the incident, only when the police came to their house.

6. The learned Judge has convicted the appellant,also on the foundation of extra judicial confession made by the accused to her mother and treated the same as reliable. The confession made by the accused to the mother, as per the prosecution witnesses, P.W. 2, only when the police came to the house of the accused i.e. on 31/1/1991 and not before that. For 4 days from the delivery i.e. 27/1/1991 to 31/1/1991, it is quite unnatural that there was no discussion and or nothing was noted by the mother about the pregnancy or delivery. No one from the family was also examined. It is difficult to accept that the mother of 4 daughters and one son could not noticed such pregnancy of her own daughter, specially when they were staying in one room. This basic story according to us, put forward by the prosecution is unnatural and improbable. According to us the defences as raised and suggested cannot be over looked and those are;

> " He has further submitted that mother of the accused was not liking her relation with Madhukar and therefore, possibility of throwing children in to the well by her mother cannot be ruled out and appears to be probable and natural. Because, at the time of delivery, it

> being first delivery of the accused, she might have become unconscious and her mother knowing that she has completed period of 9 months, and her delivery is due, must have remained present at the time of delivery and immediately after her delivery, her mother might thrown those children in to the Well to get rid of further defamation from the villagers."

As per the learned Judge, the villagers had noted the illicit pregnancy of the accused and thereafter, she delivered the children. As the family of the accused were already defamed in the village and under such circumstances, it was improbable and unnatural that t he mother of the accused threw the newly born children into the Well with the view to save her family from defamation. We are of the view that the learned Judge was wrong, as evidence and the conduct of the mother, itself shows that she was against the daughter’s pregnancy and illicit relations with Madhukar Jadhav. She was aware of the pregnancy of the accused. She went to the doctor with the daughter, 2-3 months prior to the date of the incident. It is quite natural that she was carrying the pregnancy of 5-6 months at that time and therefore there was no choice but to wait for the natural delivery.

7. The dead bodies were found after 4 days from the

date of delivery. The accused confessed about the crime to her mother on the date when the police visited i.e. on 31/1/1991. The delivery took place in the jwar filed and a blood stained blade and blood found on the spot of the said delivery. The Well in question was just 8 feet away from the spot. No one heard any cries of the children after delivery. It is quite unnatural to accept the prosecution case that the accused herself cut the novel cord of twin children and in the said condition after passing such stage of delivery, without any help of anybody, picked up the twin and threw into the Well immediately. No one from the family during the 4 days noticed the change in the shape of the stomach of the accused including P.W.2.

8. There was no defence witness examined. From the record and as per the defence statement raised by the accused in her statement Exh.33 and as the suggestions were put to the mother,P.W.2 in her cross-examination, it further shows that the accused had informed that twins were born. However, her mother insisted not to ask or enquire about it. We are of the view, therefore, that the extra judicial confession, as relied by the leaned Judge and the evidence of P.W.2, raises various

doubt in the prosecution case. It is difficult to maintain the order of conviction based on the evidence of P.W. 2, Shantabai and P.W. 5, Hanmant, who as per prosecution has recorded the confession of the accused on 1/2/1991. The statement of P.W. 2 mother was also recorded on 1/2/1991. The accused was taken in custody of 1/2/1991, but finally arrest was recorded of 5/2/1991. The delivery spot panchanama was recorded on 6/2/1991. The dead bodies were found on 31/1/1991. There was no eye witness to the incident of throwing of the twin in the well or even of delivery during the day time in the jwar filed in question. P.W. 5, who recorded the confession of the accused admitted that the accused did not tell him about the place of her delivery, it is only on 1st February, 1991, the accused told to P.S.I about the place of her delivery. In this back ground the extra judicial confession to the mother and the alleged confession by the accused to P.W. 5, Police Head Constable on 1/2/1991, is difficult to accept for the conviction of the accused.

9. There was no doubt about the death of two children. The bodies were sent to post mortem and as per post-mortem report of P.W.4, the cause of death was

due to drowning the children. The prosecution has proved the unnatural death of the two children and recovery of the dead bodies from the well. There cannot be any debate that the accused was pregnant, but except rumour, there is nothing on the record to show that the appellant had illicit relations with Madhukar Jadhav, who is grand son of the employer of the accused. The prosecution has also proved that the blood stained blade and earth were found near the Well and in the jwar filed. However, we are of the view that in absence of any direct evidence, the circumstantial evidence are not sufficient to prove beyond reasonable doubt, that it is the appellant/accused, who has committed the crime. It is only the appellant who has charged for the offence in question and no one else. We have noted, as per the evidence of Shantabai, as well as, the prosecution case, and the reasoning based upon the same, that itself is not sufficient to convict the accused for the crime in question.

10. The appellant was already acquitted for the offence under Section 315 of IPC but convicted under section 302 of IPC for committing the murder of her newly born twins. As noted, no other witnesses were

examined by the prosecution from the locality or the family members of the accused with whom she was staying for more than 7 years. It cannot be ruled out that to save the family from further defamation and damage to their name and fame in the village and specially in view of the fact that there are three more sisters and one brother, who were unmarried and living in the same house and therefore, the accused might have compelled to make such confession.

11. In the present case, a representation of the appellant, has been treated as an appeal memo and based upon which, the present appeal now proceeded for final hearing. As none appeared for the appellant, we have gone through the grounds raised by the appellant. The main contention of the appellant, as extracted is as under;

> "I was in love with Janardan Mane who is from our village. However, it is referred to in the copy of the judgment that I had illicit relations with Madhukar Vasant Jadhav alias Madhu Dhumal. Although he is a boy from our village, I and he had no (illicit) relations at any time, Moreover, at the time of my delivery I was unconscious and therefore, I have no knowledge at all as to whether or not my daughters were alive and whether it was one

> daughter or two daughters or whether it was a soon,. At the time when I attained consciousness, I asked my mother about the issue(s)) She told me that my child was dead and that the same was disposed of and that I should not ask anything in that regard. Therefore, I kept mum. I have not thrown the children into the well and I do not know as to who else committed that act. An elder person from our house might have committed that act in order to save the reputation in the village. I have very much fond for children and I might have looked after my child. However, nothing was told me in respect of the issue(s). However, a charge of killing an embryo has been levelled against me unnecessarily. I have been convicted for an offence not committed by me and have been sentenced to a major punishment of life imprisonment. "

We have noted the written statement Exh.33 filed by the appellant in addition to her statement under Section Exh.313 of Cr.P.C. The defence of appellant was of above line and she therefore, pleaded not guilty. The defence as raised and suggestion put in the cross-examination, by the advocate of the defence also of similar nature and on the same foundation. After going through the record and the evidence led by the prosecution including the evidence and cross-examination of P.W. 2, the mother of the appellant, the defence as raised, by the appellant is also probable and plausible. According to us the prosecution has failed to prove beyond reasonable doubt that the appellant and no one

else had committed the offence in question. There is no direct evidence to the incident. The conviction is based upon the circumstantial evidence. In the facts and circumstances of the case, the defence as raised, is also possible then in that circumstance, the appellant is entitled for the acquittal. The order of conviction is unsustainable. Therefore, also, in addition to the other reasonings, the conviction order cannot be maintained.

12. For the above reasons, the appeal is allowed. The Judgment and order of conviction passed by the II Additional Sessions Judge, Satara, in Sessions Case No.144/1991 is quashed and set aside.

. The appellant is acquitted of the offence punishable under Section 302 of Indian Penal Code. Her bail bonds shall stand cancelled.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]